

MEMORANDUM OF AGREEMENT
BETWEEN
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) is entered into by and between the U.S. Department of the Army (DA) and the National Oceanic and Atmospheric Administration (NOAA) ("the Parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for cooperative activities and for the provision of reimbursable technical assistance and related goods or services.

This MOA is entered into pursuant to 15 U.S.C. 1525, the Department of Commerce's joint project authority and 10 U.S.C. 2358, the Department of Defense's authority for joint research and development projects. It has been determined that this arrangement is of mutual benefit to both Parties. Subsequent Annexes to this MOA will state the appropriate authorizing statutes, such as the Economy in Government Act, 31 U.S.C. 1535.

ARTICLE 11 - SCOPE

Activities which may be conducted under this MOA include engineering, design and construction management; hydrographic surveying; technology support; charting; research and development; and such related goods or services as may be agreed upon in the future. Activities may also include coordination of issues of resource management of concern to both parties including, but not limited to, policy and regulatory development and implementation potentially affecting coastal and ocean resources. The scope of this umbrella MOA extends to all activities of NOAA which are under the purview of NOAAs Under Secretary for Oceans and Atmosphere and those of the DA which are under the purview of the Assistant Secretary of the Army for Civil Works.

Nothing in this MOA shall be construed to require either Party to conduct activities or provide goods or services, except as set forth in Annexes or Work Orders (WO(s)) under this MOA. Future agreements between the Parties are expected to be developed as Annexes under this MOA. This MOA shall not affect any pre-existing or independent relationships or obligations between the NOAA and the DA. Other agencies may be parties to Annexes or WOs with the mutual agreement of all parties. The Parties agree to consult with each other if either Party conducts negotiations with third parties on subjects within the scope of this MOA which may lead to agreements or projects creating or implying obligations or commitments affecting the other Party.

ARTICLE III - PARTY REPRESENTATIVES

The Executive Agent for each Party shall serve as its central point of contact on matters relating to this MOA. The Executive Agent for the NOAA shall be the Assistant Administrator for Ocean Services and Coastal Zone Management. The Executive Agent for the DA shall be the Director for Civil Works.

The Executive Agents will:

- (1) appoint representatives to serve as points-of-contact to develop, conclude, sign, and execute Annexes under this MOA;
- (2) negotiate solutions to any disputes which may arise relative to interpretation or application of this MOA, or of any Annex or WO concluded under this MOA.
- (3) appoint an Executive Secretary for its Party who will be responsible for communications, review of Annexes and WOs, and preparation of an annual summary of the activities of this MOA.

ARTICLE IV - ANNEXES AND RELATED WORK ORDERS

Work in specific areas shall be in compliance with mutual agreements contained in written Annexes. Either Party may request development of Annexes. Specific tasks within the scope, of these Annexes which require the provision of goods or services shall be

executed in compliance the written WOs.

ANNEXES executed by the Parties shall contain agreements on specific joint projects or, when goods or services are to be provided, work statements and implementation and funding arrangements for specific topic areas. Annexes shall include the following:

(1) Title

(2) Introduction - concise description of purpose; authorities of the Parties to enter into the Annex; background; and reference to this umbrella MOA;

(3) Work Statement or Execution Arrangement - description of joint activities; general statement of work, schedule, and deliverables (which may be in the form of an Annual Work Plan to accompany the Annex); or reference to WOs to be developed for particular tasks;

(4) Implementation and Funding Arrangements - identification of cooperating organizations; amount and citation of funds or other resources to be transferred between Parties to accomplish work as stated above, including funding of joint activities and cooperative research and development projects; statement of date upon which cited funds expire for obligation purposes; and type of contracts to be used (if planned and known); or reference to WOs to be developed for particular tasks;

(5) Responsibilities - identification of individual project managers and individuals authorized to Sign WOs;

(6) Amendment, Review, and Termination - procedures for amending the Annex and related WOs, if any; expected reviews; and termination date;

(7) Reports and Publications - types and frequencies of reports; identification of rights to data, software, and intellectual property; and responsibilities for records maintenance and public announcements;

(8) Liability - identification of liability on joint activities or cooperative research and development projects;

(9) Other - such other particulars as are necessary to describe clearly the obligations of the Parties with respect to covered activities, and exceptions, if any, to terms of this MOA.

WORK ORDERS may be executed pursuant to Annexes and accompanying Annual Work Plans in order to carry out specific tasks which require the provision of goods or services. Both Parties shall conclude mutually agreed upon written WOs for project specific work, which shall include the following: a detailed scope of work statement; schedules; identification of the NOAA and DA points of contact for work execution; the amount of funds required and available to accomplish the scope of work as stated above; frequency of inspections if required; and such other particulars as are necessary to describe clearly the

obligations of the parties with respect to the requested goods or services.

Activities shall be conducted under this MOA only after an appropriate Annex has been signed by representatives appointed by the Executive Agents to execute that Annex. Goods or services shall be provided by one Party for the other Party only after an appropriate WO is signed by authorized individuals. The Parties shall certify, prior to execution, that each WO under this MOA complies with the requirements of the Economy in Government Act. Upon signature by each Parties' representative, such WO shall constitute a valid Economy in Government Act order.

In case of conflict between this MOA and an Annex or WO, this MOA shall control unless an explicit exception is approved in writing by the Executive Agents. In case of conflict between an Annex and a WO, the Annex shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

The Parties shall conduct activities and provide goods or services in accordance with the purpose, terms, and conditions of this MOA and with the specific requirements set forth in Annexes or WO.

The Parties shall use their best efforts to provide agreed-upon goods or services either by contract or by in-house effort.

The Party providing any goods or services under this MOA shall inform the other Party of all contracts entered-into under each WO and shall provide detailed periodic progress, financial and other reports to the other Party as agreed to in the Annex or WO. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

The Party ordering goods or services under this MOA shall obtain all necessary real estate interests and access to all work sites and support facilities, and shall perform

all coordination with, and obtain any permits from , state and local agencies, as necessary during the execution of each Annex or WO.

ARTICLE VI - FUNDING

The Party requesting goods or services pursuant to a WO authorized by this MOA shall pay all costs associated with the other Party's provision of those goods or services. For WOs for work estimated to cost more than \$250,000 total in contracts and in-house services or \$50,000 in contracts, an approved finding document shall be in place prior to initiating any work. The Party providing goods or services shall prepare a Standard Form (SF) 1080 (Voucher for Transfers between Appropriations and/or Funds) and bill the other Party in advance. For WOs for work valued at less than these amounts, the Party providing goods or services shall bill the other Party monthly for costs incurred, using SF 1080, and the other Party shall provide reimbursement within 30 days of receipt of the voucher.

If the Party providing goods or services under this MOA forecasts its actual costs under a WO to exceed the amount of funds available under that WO, it shall promptly notify the other Party of the amount of additional funds necessary to complete the work under that WO. The Party requesting the goods or services shall either provide the additional funds, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that WO.

Within 90 days of completing the work under a WO, the Party providing goods or services under that WO shall conduct an accounting to determine the actual costs of the work and present it to the other Party. Within 30 days of completion of this accounting, the Party providing goods or services shall return to the other Party any funds advanced in excess of the actual costs as then known, or that Party receiving the goods or services shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the duty of the requesting Party in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work awarded by either Party shall be governed by the policies and procedures of their respective organization.

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE VII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by either Party shall be resolved in accordance with Federal law and the terms of the individual contract. Each Party shall be responsible for handling litigation involving disputes and appeals arising under or related to any contract which it has awarded pursuant to this MOA, and for coordinating with the Department of Justice as appropriate. Each Party shall notify the other Party of any such litigation and afford the other Party an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

In the event of a dispute between the Parties, the NOAA and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

ARTICLE X - LIABILITY

If liability of any kind is imposed on the United States relating to the provision of goods or services under WOs authorized by this MOA, each Party will accept accountability for its actions, but the Party requesting goods or services under a WO shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability and all related costs.

ARTICLE XI - PUBLIC INFORMATION

Each party is responsible for justification and explanation of its programs before Congress and other agencies, departments, and office of the Federal Executive Branch and for public information. The other Party may provide, upon request, any assistance necessary to support the justification or explanations of programs conducted under this MOA. The other Party may also make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. Each Party shall make its best efforts to give the other Party advance notice before making any public statements regarding work contemplated, undertaken, or completed pursuant to Annexes or WOs under this MOA.

ARTICLE XII - AMENDMENT AND TERMINATION

This MOA may be amended only by written, mutual agreement of the Parties. This MOA may be terminated by mutual agreement. In addition, either Party may terminate this MOA by providing written notice to the other Party. The termination shall be effective on the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the Party requesting goods or services under a WO shall be responsible for the costs of closing out or transferring any ongoing contracts. The provision of this MOA, Annexes or WOs thereto, which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

ARTICLE XIII - EFFECTIVE DATE

This MOA shall become effective when signed by the approving official of both the NOAA and the DA and shall remain ineffect for five years unless terminated as provided in Article XII. This MOA may be renewed upon the written, mutual agreement of the executive agents.

U.S. National Oceanic and Atmospheric
Administration

U.S. Department of

Diane H. Loepfen
/signed/

John Zirscky
/signed/

Deputy Under Secretary of Commerce
the
for Oceans and Atmosphere

Acting Assistant Secretary of
Army (Civil Works)

Date: 7/21/95

Date: 6/30/95